

TENNESSEE AUCTIONEER COMMISSION

The Tennessee Auctioneer Commission held its meeting March 26, 2007, Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. Those present for the meeting were Bobby Colson, Chairperson; Kenneth Dreaden, Vice Chairperson; Howard Phillips, Board Member; Marvin Alexander, Board Member; Bethany Heuer, Staff Attorney; Lynn McGill, Administrative Director; Sheila Piper, Administrative Assistant and members of the Tennessee Auctioneer Association.

Motion was made by Howard Phillips and seconded by Kenneth Dreaden to adopt agenda. Motion carried. No opposition.

Minutes from the meeting of December 5, 2006 were presented to the Commission Members for approval. Motion was made by Howard Phillips and seconded by Marvin Alexander to approve said minutes. Motion carried. No opposition.

A Rulemaking Hearing was conducted, and the Commission discussed Rule 0160-1-.01 and voted to omit that proposed rule change. The Commission received comments and questions from the floor. There was a majority vote to adopt the rule changes as proposed with the exception of Rule 0160-1-.01.

William Sinclair-appeared before the Commission Members to request that he be allowed to pay \$150.00 to place his auctioneer license in retirement.

Motion was made by Marvin Alexander and seconded by Howard Phillips to approve this request. Motion carried. No opposition.

Lee Amonett-appeared before the Commission Members to request that his sponsoring auctioneer be approved because he lives in another state.

Motion was made by Kenneth Dreaden and seconded by Marvin Alexander to approve the request. Motion carried. No opposition.

Sheila Piper presented William Taylor Wright's request to reapply for licensure as auctioneer. Motion was made by Marvin Alexander and seconded by Kenneth Dreaden to request Mr. Wright appear before the Commission Members at the May 7th meeting. Motion carried. No opposition.

Christy Carson-appeared before the Commission Members to request that her sponsoring auctioneer be approved because he lives in another state.

Motion was made by Kenneth Dreaden and seconded by Marvin Alexander to approve the request. Motion carried. No opposition.

Jason Scudder appeared before the Commission Members to request the approval of his auctioneer license; he tested in 2003, but did not pay fee amount for license. Motion was made by Howard Phillips and seconded by Kenneth Dreaden that Mr. Scudder appear before the Commission Members at the May 7th Commission meeting. Motion carried. No opposition.

William Harper appeared before the Commission Members to request a waiver of apprenticeship, based on experience. Motion was made by Marvin Alexander and seconded by Howard Phillips that Mr. Harper be approved to take the apprentice test. Vote taken by roll call, Howard Phillips voted yes. Bobby Colson voted yes. Marvin Alexander voted yes. Kenneth Dreaden voted no. Mr. Dreaden stated that he felt that applicant had enough experience to be approved for licensure as an auctioneer. Motion carried.

James Lumpkins, Jr. appeared before the Commission Members. Mr. Lumpkins let his auctioneer license expire in 1995, he requested that he be approved to retest. Motion was made by Howard Phillips and seconded by Kenneth Dreaden for Mr. Lumpkins to retest without having the apprentice log. Motion carried. No opposition.

Sheila Piper presented the auctioneer application on Arthur Gothelf from Loudon, Tennessee to the Commission Members. Mr. Gothelf requested that he be approved for an auctioneer license based on experience. Motion was made by Howard Phillips and seconded by Kenneth Dreaden to defer until the May meeting. Commission Members requested more proof of experience. Mr. Gothelf to submit brochures to the Commission. Motion carried. No opposition.

Darrell Wilkes appeared before the Commission Members. Mr. Wilkes requested that he be approved for an auctioneer license based on experience. Motion was made by Marvin Alexander and seconded by Howard Phillips that he be allowed to take the apprentice test and apply for an apprentice license. Mr. Wilkes was advised that he could take a 30 hour course and test for the auctioneer license in August when he will have more experience. Vote taken by roll call, Howard Phillips voted yes. Bobby Colson voted yes. Marvin Alexander voted yes. Kenneth Dreaden voted no. Mr. Dreaden stated that he felt that applicant had enough experience to be approved for licensure as an auctioneer. Motion carried.

Sheila Piper presented Ohio Auction School application to the Commission Members. Motion was made by Howard Phillips and seconded by Kenneth Dreaden to approve Ohio Auction School for 84.25 hours of qualifying education. Motion carried. No opposition.

Legal presented the following complaints to the Commission Members.

Closed complaints with paid Consent Orders:

200603229. Trotter Auction Co. \$100.00
200600219. Roebuck Auctions. \$2,000.00
200600169. Camper Corner of Nashville. \$500.00

200603315. Wholesale Exchange Inc. Reviewer is Bobby Colson.

Complainant alleged that they did not receive the title to their vehicle soon enough. Documents show that the vehicle was purchased on August 5th, the complaint was filed on August 21st, and complainant was in receipt of the title and registration on Sept. 15th. Motion was made by Marvin Alexander and seconded by Kenneth Dreaden to take Legal's recommendation to close. Motion carried. No opposition.

200601609. Mark Hafner Auction & Realty, LLC. Reviewer is Bobby Colson.

Case went to an Informal Conference. Complainant alleged a dispute over a title and a buyer's premium at a repo sale. Respondent stated that Complainant needed to go to seller and pay the sales tax and then seller will give her the title. Respondent did admit a mistake in the amount of the tax for the buyer's premium and states they will send a refund. At Informal Conference, Respondent was told that they needed to refund \$209.65 to the complainant, and then it will be recommended that the file be closed. Commission Members voted to close only with verification of payment.

200604382. Masengill.

Complainant is not happy with the auction of a farm, which was inherited by several siblings. Complainant says that Respondent authorized a road to be built through the property without informing all of the heirs; and Complainant alleges that Respondent should have advertised the auction in a newspaper of a major city that is about 60 miles (or one hour) away. Respondent stated that the client contacted him regarding selling a house inherited by himself and his sisters (out-of-town). The heirs met with Respondent and signed a contract regarding the auction. Respondent stated in response to the road issue that it was determined that the most advisable way to auction the property was to divide it into nine tracts, as authorized under the first paragraph of the contract. Respondent stated the lots would not be accessible utilizing the small road frontage of each lot because of the topography and it was decided to rough grade an access roadway to be utilized for access to the lots with an easement granted to each lot across the roadway. Respondent stated that the subdivision and roadway were discussed with the brother (local) on several occasions and that Respondent assumed that the brother was sharing the information concerning the auction with his sisters.

Respondent stated regarding the advertising, that he advertised in 4 newspapers in the surrounding area, where in his experience he believed that the buyers would come from. Also, one thousand brochures were printed and distributed; the auction was posted on their website and advertised on Charter cable television. Signs were posted 6 weeks prior to the auction. The farm has not been sold. There was a bid for 271,100.00.

Motion was made by Marvin Alexander and seconded by Kenneth Dreaden to take Legal's recommendation to close with letter of instruction stating that Respondent should make an effort to communicate with all owners of property being sold, and not just a local contact. Motion carried. No opposition.

200705163. Unknown.

Complainant alleged unlicensed auction activity. Respondent stated that they were selling their personal home. Motion was made by Kenneth Dreaden and seconded by Marvin Alexander to take Legal's recommendation to dismiss. Motion carried. No opposition.

200704944.

Respondent did not use his firm name on an advertisement, but use that of another company. Respondent also did not list his license number in the ad. Motion was made by Marvin Alexander and seconded by Howard Phillips to go with Legal's recommendation to issue a civil penalty in the amount of \$200.00 for not listing the firm name and number in the advertisement. Motion carried. No opposition.

200704755. Terry Allen.

Complainant is a bookkeeper and stated that she has the auction on videotape and that the Respondent did not account for all of the sales with tickets that she received. Respondent stated that it would be impossible even for a professional accountant to know the amounts were wrong by simply glancing at a large amount of sales tickets. Respondent says they use standard clerking tickets purchased from Missouri Auction School. Respondent stated that as a standard practice after each auction, lot numbers are checked on all tickets to ensure accuracy. If an item is placed on an incorrect lot during the sale, these post-auction verification procedures will place the ticket onto the correct lot ensuring the right customer gets paid. An incorrect lot is very rare, but not impossible. It is possible that an item was placed on estate lot, then later found to belong to someone else and changed. These changes would not be reflected on Complainant's personal method of bookkeeping, but instead would show as a missing ticket. Respondent stated it takes discipline and focus for their bookkeeper to stay on track from the auction block and that keeping accurate records from the audience would be nearly impossible. Respondent

says the Complainant's estate was not the sole consignor that had items involved in the sale; there were a number of different lots assigned to the auction. Respondent also stated complainant was very disruptive during the auction.

Motion was made by Kenneth Dreaden and seconded by Howard Phillips to take Legal's recommendation to close. Motion carried. No opposition.

200604394.

Complainant stated that they received a bad check at the auction. Respondent stated that they told the Complainant before signing the contract that they do not guarantee bad checks.

Motion was made by Marvin Alexander and seconded by Kenneth Dreaden for Legal to do a follow-up, Informal Conference and Formal Hearing authorized. Motion carried. No opposition.

200603240. Empire.

Complaint alleged unlicensed conduct; however, an investigation revealed that the auction was conducted by a licensed auctioneer. No violation of laws or rules could be found.

Motion was made by Kenneth Dreaden and seconded by Howard Phillips to take Legal's recommendation to close. Motion carried. No opposition.

200603234. Dion Guy Abadi.

The complaint alleged unlicensed conduct. Originally we thought that Respondent had conducted an auction on a lapsed license. However, upon further investigation, it has been determined that Respondent paid his renewal fees on August 10th, and the auction was conducted on August 19th.

Motion was made by Kenneth Dreaden and seconded by Howard Phillips to take Legal's recommendation to close. Motion carried. No opposition.

200604033.

200705046.

200704683.

200604593.

All of the above complaints and responses are similar. Basically, Complainants state that the Respondent contacted them requesting to sell their personal property at auction, and promised to sell that property for a certain amount. However, Respondent sells at a much lower price, and then responds to the Commission that they have a signed contract stating

“absolute auction.” Usually, the equipment has a lien on it and Complainants stated they informed Respondent that they would at least have to get enough money to pay off the lien, or they do not want to sell. When the property sells for only a fraction of the “promised” price, it creates enormous financial hardship on the sellers/complainants. There are also probably between 10 – 20 closed files in the administrative office that have similar facts and have been dismissed simply because there is a signed contract stating “absolute auction.”

Based on the number of complainants that we have against this licensee, who all obviously do not know what “absolute auction” means (because they send me a copy of the contract with their complaint), I would assert that this company is engaging in “fraud in the inducement.” Fraud in the inducement is a legal contract term, which means that the victim of fraud realizes that a bargain is being made but consents with a false impression of the terms or obligations engendered by the other party. In other words, the other party has made a fraudulent misrepresentation by asserting information they know is untrue. This would be a violation of T.C.A. §62-19-112, and possibly other statutes and rules as well.

Motion was made by Howard Phillips and seconded by Kenneth Dreaden to take Legal’s recommendation to authorize for Formal Hearing (and Informal Conference, if needed). Motion carried. No opposition.

200705355.

Firm name and number left off advertisement.

Motion was made by Howard Phillips and seconded by Kenneth Dreaden to take Legal’s recommendation to issue a civil penalty in the amount of \$100.00. Motion carried. No opposition.

200705174.

Conducting an auction for an unlicensed firm.

Motion was made by Kenneth Dreaden and seconded by Howard Phillips to take Legal’s recommendation to issue a civil penalty in the amount of \$100.00. Motion carried. No opposition.

There being no further business, meeting adjourned.

Minutes
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APPROVED:

Bobby Colson
Chairperson

Kenneth Dreaden
Vice-Chairperson

Howard Phillips
Board Member

Marvin Alexander
Board Member